

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 2

Introduced by Senator Speier

December 6, 2004

~~An act to amend Section 2051.5 of, and to add Sections 124.5, An act to amend Sections 2051.5, 10089.70, 10089.79, 10089.80, and 10089.82 of, and to add Sections 124.5, 791.135, 1749.85, and 2059 to 2059, and 2060 to, and to repeal Section 10089.84 of, the Insurance Code, relating to homeowners' insurance.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 2, as amended, Speier. Homeowners' insurance: valuation: continuing education.

Existing law establishes specified standards for the collection, use, and disclosure of information gathered in connection with insurance transactions by insurers, agents, and insurance-support organizations.

This bill would prohibit an insurer from submitting a report of a claim filed under a homeowners' insurance policy to an insurance-support organization whose primary source of information is insurance institutions unless the insurer has provided the insured with a copy of the report before submitting it to the insurance-support organization, except as specified.

Existing law requires an applicant for a fire and casualty broker-agent license to complete courses in a prelicensing curriculum, and to pass an examination. Existing law requires fire and casualty broker-agents to meet specified continuing education requirements.

This bill would require the Department of Insurance to develop a curriculum to instruct fire and casualty broker-agents and applicants for fire and casualty broker-agent licenses in proper methods of estimating the replacement value of structures, and of recommending

appropriate levels of coverage under a homeowners' insurance policy. On and after a specified effective date, it would prohibit a fire and casualty broker agent from transacting homeowners' insurance unless he or she has successfully completed this curriculum. The bill would also require applicants for a broker-agent license and individuals who are not broker-agents to have completed and been examined on this curriculum. The bill would require broker-agents and other individuals to complete courses in this curriculum periodically thereafter, as specified.

Existing law provides that, under a specified type of homeowners' insurance policy, when a state of emergency has been declared, no time limit of less than 24 months from the date that the first payment toward the actual cash value is made shall be placed upon an insured in order to collect the full replacement cost of the loss, subject to the policy limit.

This bill would apply this 24-month minimum period, in addition, to the collection of the full additional living expenses for loss of use. It would also require, if a state of emergency has been declared, and if debris is removed from the covered property by any person or entity at no charge to the insured, or at a rate that is below the fair market rate for the services rendered, that the insurer pay the insured an amount equal to the fair market rate for those services, subject to the policy limit.

Existing law generally regulates the terms of homeowners' insurance policies.

This bill would prohibit a homeowners' insurance policy issued, delivered, or renewed in this state from containing a provision that, in the event of a total loss of the insured structure due to ~~fire~~ *an event for which a state of emergency has been declared*, limits payment for the loss of personal property to an amount less than the policy limits for personal property loss. It would prohibit an insurer from requiring the insured to provide an inventory or other accounting of the personal property lost.

The bill would require an insurer, in the event of a loss under a homeowners' insurance policy for which the insured has made a claim for alternative living expenses, to provide the insured with a list of items that the insurer believes may be covered under the policy as alternative living expenses. It would require an insurer, in the event of a claim involving a total loss under a homeowners' insurance policy,

to provide the insured with a copy of the insured's policy within 15 working days of the date that the insurer received notice of the claim.

Under existing law, the Insurance Commissioner generally regulates the business of insurance.

This bill would prohibit an insurer, or insurance agent or broker, from using any computer software product marketed or intended to be used as an aid in discussions with insureds, or applicants for insurance, regarding the estimated cost of replacing, in whole or in part, a structure under a homeowners' insurance policy, unless the product has been approved for use by the commissioner. It would require the commissioner to adopt regulations establishing criteria for approval of these products.

Existing law establishes, until January 1, 2008, a mediation program for disputes arising out of certain auto insurance, earthquake insurance, and homeowners' insurance claims.

This bill would make this program permanent, and would make specified changes to the homeowners' and earthquake claims to which it applies. The bill would make certain other changes to the provisions governing the mediation program.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 124.5 is added to the Insurance Code, to
2 read:

3 124.5. "Homeowners' insurance" means insurance covering
4 the risks described in subdivision (a) of Section 675.

5 SEC. 2. Section 791.135 is added to the Insurance Code, to
6 read:

7 791.135. (a) Except as provided in subdivision (b), an
8 insurer shall not submit a report of a claim filed under a
9 homeowners' insurance policy to an insurance-support
10 organization whose primary source of information is insurance
11 institutions unless the insurer has provided the insured with a
12 copy of the report before submitting it to the insurance-support
13 organization.

14 (b) Subdivision (a) shall not apply to any report of a claim that
15 involves suspected fraud by the insured.

1 ~~SEC. 2.~~

2 *SEC. 3.* Section 1749.85 is added to the Insurance Code, to
3 read:

4 1749.85. (a) The department shall develop a curriculum to
5 instruct fire and casualty broker-agents and applicants for fire
6 and casualty broker-agent licenses in proper methods of
7 estimating the replacement value of structures, and of
8 recommending appropriate levels of coverage under a
9 homeowners' insurance policy. Each provider of courses based
10 upon this curriculum shall submit its course content to the
11 commissioner for approval.

12 (b) (1) A fire and casualty broker-agent who is licensed on the
13 date that this requirement takes effect shall not transact
14 homeowners' insurance unless he or she has successfully
15 completed the curriculum approved by the commissioner
16 pursuant to subdivision (a). This requirement shall take effect 18
17 months after the date that the department finalizes the
18 curriculum.

19 (2) A fire and casualty broker-agent who is licensed after the
20 date specified in paragraph (1) shall not transact homeowners'
21 insurance unless he or she has met the requirements of that
22 paragraph, or has passed a qualifying examination that includes
23 the material in the curriculum approved pursuant to subdivision
24 (a).

25 (3) A fire and casualty broker-agent shall not transact
26 homeowners' insurance unless he or she successfully completes
27 the curriculum approved pursuant to subdivision (a) at least once
28 every six years following his or her satisfaction of the
29 requirements of paragraph (1) or (2).

30 (4) The commissioner shall suspend the license to transact
31 homeowners' insurance of any fire and casualty broker-agent
32 who does not meet the requirements of this subdivision. The
33 license may be reinstated only upon application to the
34 commissioner and successful completion of an examination
35 based upon the approved curriculum.

36 (c) A person not licensed as a fire and casualty broker-agent
37 shall not estimate the replacement value of a structure, or
38 recommend an appropriate level of coverage under a
39 homeowners' insurance policy, unless he or she has been
40 certified to do so by passing an examination developed by the

1 commissioner on this subject. The commissioner shall require
2 such a person to be recertified periodically in a manner and
3 frequency to be determined by the commissioner.

4 ~~SEC. 3.~~

5 *SEC. 4.* Section 2051.5 of the Insurance Code is amended to
6 read:

7 2051.5. (a) Under an open policy that requires payment of
8 the replacement cost for a loss, the measure of indemnity is the
9 amount that it would cost the insured to repair, rebuild, or replace
10 the thing lost or injured, without a deduction for physical
11 depreciation, or the policy limit, whichever is less.

12 If the policy requires the insured to repair, rebuild, or replace
13 the damaged property in order to collect the full replacement
14 cost, the insurer shall pay the actual cash value of the damaged
15 property, as defined in Section 2051, until the damaged property
16 is repaired, rebuilt, or replaced. Once the property is repaired,
17 rebuilt, or replaced, the insurer shall pay the difference between
18 the actual cash value payment made and the full replacement cost
19 reasonably paid to replace the damaged property, up to the limits
20 stated in the policy.

21 (b) (1) No time limit of less than 12 months from the date that
22 the first payment toward the actual cash value is made shall be
23 placed upon an insured in order to collect the full replacement
24 cost of the loss, subject to the policy limit. Additional extensions
25 of six months shall be provided to policyholders for good cause.

26 (2) In the event of a loss relating to a “state of emergency,” as
27 defined in Section 8558 of the Government Code, the following
28 provisions apply:

29 (A) No time limit of less than 24 months from the date that the
30 first payment toward the actual cash value is made shall be
31 placed upon the insured in order to collect the full replacement
32 cost of the loss or the full amount of additional living expenses
33 for loss of use, subject to the policy limit. Nothing in this section
34 shall prohibit the insurer from allowing the insured additional
35 time to collect the full replacement cost or additional living
36 expenses for loss of use.

37 (B) If debris is removed from the covered property by any
38 person or entity at no charge to the insured, or at a rate that is
39 below the fair market rate for the services rendered, the insurer

1 shall pay the insured an amount equal to the fair market rate for
2 those services, subject to the policy limit.

3 (c) (1) In the event of a total loss of the insured structure, no
4 policy issued or delivered in this state may contain a provision
5 that limits or denies payment of the replacement cost in the event
6 the insured decides to rebuild or replace the property at a location
7 other than the insured premises. However, the measure of
8 indemnity shall be based upon the replacement cost of the
9 insured property and shall not be based upon the cost to repair,
10 rebuild, or replace at a location other than the insured premises.

11 (2) No policy issued, delivered, or renewed in this state may
12 contain a provision that, in the event of a total loss of the insured
13 structure due to ~~fire~~ *an event for which a state of emergency, as*
14 *defined in Section 8558 of the Government Code, has been*
15 *declared*, limits payment for the loss of personal property to an
16 amount less than the policy limits for personal property loss. An
17 insurer shall not require the insured to provide an inventory or
18 other accounting of the personal property lost.

19 (3) For the purposes of paragraphs (1) and (2), an insurer shall
20 not consider whether the foundation of the insured structure may
21 be used to rebuild the structure when determining if the damage
22 constitutes a total loss.

23 (4) The commissioner shall adopt regulations defining “total
24 loss” for the purposes of this section *and Section 2060*.

25 (d) Nothing in this section shall prohibit an insurer from
26 restricting payment in cases of suspected fraud.

27 (e) The changes made to this section by the act that added this
28 subdivision shall be implemented by an insurer on and after the
29 effective date of that act, except that an insurer shall not be
30 required to modify policy forms to be consistent with those
31 changes until July 1, 2005. On and after July 1, 2005, all policy
32 forms used by an insurer shall reflect those changes.

33 (Added by Stats. 2004, Ch. 311, Sec. 1. Effective August 25,
34 2004.)

35 ~~SEC. 4.~~

36 *SEC. 5.* Section 2059 is added to the Insurance Code, to read:

37 2059. No insurer, or insurance agent or broker, may use any
38 computer software product marketed or intended to be used as an
39 aid in discussions with insureds, or applicants for insurance,
40 regarding the estimated cost of replacing, in whole or in part, a

1 structure under a homeowners' insurance policy, unless the
2 product has been approved for use by the commissioner. The
3 producer of the software product may apply to the commissioner
4 for approval. The approval or disapproval of the product shall be
5 based upon criteria set forth in regulations adopted by the
6 commissioner.

7 *SEC. 6. Section 2060 is added to the Insurance Code, to*
8 *read:*

9 *2060. (a) In the event of a loss under a homeowners'*
10 *insurance policy for which the insured has made a claim for*
11 *alternative living expenses, the insurer shall provide the insured*
12 *with a list of items that the insurer believes may be covered*
13 *under the policy as alternative living expenses. The list may*
14 *include a statement that the list is not intended to include all*
15 *items covered under the policy, but only those that are commonly*
16 *claimed, if this is the case. If the department develops a list for*
17 *use by insurers, the insurer may use that list.*

18 *(b) In the event of a claim involving a total loss under a*
19 *homeowners' insurance policy, the insurer shall provide the*
20 *insured with a copy of the insured's policy within 15 working*
21 *days of the date that the insurer received notice of the claim.*

22 *SEC. 7. Section 10089.70 of the Insurance Code is amended*
23 *to read:*

24 *10089.70. (a) The department shall establish a program for*
25 *the mediation of the disputes between insured complainants and*
26 *insurers arising out of the Northridge earthquake of 1994 or any*
27 *subsequent earthquake, and disputes arising under automobile*
28 *pursuant to any of the following:*

29 *(1) A claim that arises under a homeowners' insurance policy*
30 *and that involves loss due to a fire for which the Governor has*
31 *declared a state of emergency pursuant to Section 8558 of the*
32 *Government Code. The department may refer to mediation any*
33 *dispute covered by this paragraph in which the parties to the*
34 *contract wish to discuss possible payments beyond policy limits.*

35 *(2) A claim that arises under a policy covering earthquake*
36 *damage and that involves loss due to an earthquake for which the*
37 *Governor has declared a state of emergency pursuant to Section*
38 *8558 of the Government Code. With respect to disputes arising*
39 *under this paragraph, the program shall apply only to personal*
40 *lines of insurance related to residential coverage.*

1 (3) *A claim that arises under automobile collision coverage or*
2 *automobile physical damage coverage, in a policy as defined in*
3 *Section 660. The program, with respect to the mediation of*
4 *earthquake insurance claims, shall only apply to personal lines of*
5 *insurance related to residential coverage. The*

6 (b) *The goal of the program shall be to favorably resolve a*
7 *statistically significant number of disputes sent to mediation*
8 *under the program. This subdivision shall not apply to*
9 *any dispute that turns on a question of major insurance coverage*
10 *or a purely legal interpretation, or any dispute involving the*
11 *actions of an agent or broker in which the insurer is not alleged to*
12 *have been responsible for the conduct, or any complaint the*
13 *commissioner finds to be frivolous, or any dispute in which a*
14 *party is alleged to have committed fraud.*

15 ~~(b) The department shall also establish a program for the~~
16 ~~mediation of disputes arising from claims under policies between~~
17 ~~insured complainants and insurers regarding residential property~~
18 ~~insurance losses, other than earthquake losses, occurring after~~
19 ~~September 30, 2003, and for which the Governor has declared a~~
20 ~~state of emergency pursuant to Section 8558 of the Government~~
21 ~~Code. This subdivision shall not apply to any complaint that the~~
22 ~~commissioner finds to be frivolous, or any dispute that turns on a~~
23 ~~question of major insurance coverage or a purely legal~~
24 ~~interpretation, or any dispute involving the actions of an agent or~~
25 ~~broker in which the insurer is not alleged to have been~~
26 ~~responsible for the conduct, or any complaint the commissioner~~
27 ~~finds to be frivolous, or any dispute in which a party is alleged to~~
28 ~~have committed fraud. The department may refer to mediation~~
29 ~~any dispute covered by this subdivision in which the parties to~~
30 ~~the contract wish to discuss possible payments beyond policy~~
31 ~~limits.~~

32 *SEC. 8. Section 10089.79 of the Insurance Code is amended*
33 *to read:*

34 10089.79. (a) The costs of mediation shall be reasonable, and
35 shall be borne by the insurer, except as provided in Section
36 10089.81. The commissioner may set a fee not to exceed seven
37 hundred dollars (\$700) for each dispute mediated pursuant to
38 subdivision (a) of Section 10089.70, and one thousand five
39 hundred dollars (\$1,500) for each dispute mediated pursuant to
40 subdivision (b) of that section *this chapter.*

(b) The administrative expenses for the mediation program shall be paid from existing resources available to the department. If additional resources are required by the department, those resources shall be made available by an annual appropriation in the Budget Act.

SEC. 9. Section 10089.80 of the Insurance Code is amended to read:

10089.80. (a) The representatives of the insurer shall know the facts of the case and be familiar with the allegations of the complainant. The insurer or the insurer's representative shall produce at the settlement conference a copy of the policy and all documents from the claims file relevant to the degree of loss, value of the claim, and the fact or extent of damage. For disputes mediated pursuant to ~~subdivision (b)~~ *paragraph (1) of subdivision (a)* of Section 10089.70, the department shall refer to mediation issues related to the settlement of the claim. The insured and insurer shall produce, to the extent available, documents relevant to the successful mediation of the claim, including documents related to the degree of loss, the value of the claim, and the fact or extent of damage.

The mediator may also order production of other documents that the mediator determines to be relevant to the issues under mediation. If a party declines to comply with that order, the mediator may appeal to the commissioner for a determination of whether the documents requested should be produced. The commissioner shall make a determination within 21 days. However, the party ordered to produce the documents shall not be required to produce while the issue is before the commissioner in this 21-day period. If the ruling is in favor of production, any insurer that is subject to an order to participate in mediation issued under subdivision (a) of Section 10089.75 shall comply with the order to produce. Insureds, and those insurers that are not subject to an order to participate in mediation, shall produce the documents or decline to participate further in the mediation after a ruling by the commissioner requiring the production of those other documents. Declination of mediation by the insurer under this section may be considered by the commissioner in exercising authority under subdivision (a) of Section 10089.75.

The mediator shall have the authority to protect from disclosure information that the mediator determines to be

1 privileged, including, but not limited to, information protected by
2 the attorney-client or work-product privileges, or to be otherwise
3 confidential.

4 (b) The mediator shall determine prior to the mediation
5 conference whether the insured will be represented by counsel at
6 the mediation. The mediator shall inform the insurer whether the
7 insured will be represented by counsel at the mediation
8 conference. If the insured is represented by counsel at the
9 mediation conference, the insurer's counsel may be present. If
10 the insured is not represented by counsel at the mediation
11 conference, then no counsel may be present.

12 (c) Section 703.5 and Chapter 2 (commencing with Section
13 1115) of Division 9 of the Evidence Code apply to a mediation
14 conducted under this chapter.

15 (d) The statements made by the parties, negotiations between
16 the parties, and documents produced at the mediation are
17 confidential. However, this confidentiality shall not restrict the
18 access of the department to documents or other information the
19 department seeks in order to evaluate the mediation program or
20 to comply with reporting requirements. This subdivision does not
21 affect the discoverability or admissibility of documents that are
22 otherwise discoverable or admissible.

23 *SEC. 10. Section 10089.82 of the Insurance Code is amended*
24 *to read:*

25 10089.82. (a) An insured may not be required to use the
26 department's mediation process. An insurer may not be required
27 to use the department's mediation process, except as provided in
28 Section 10089.75.

29 (b) Neither the insurer nor the insured is required to accept an
30 agreement proposed during the mediation.

31 (c) If the parties agree to a settlement agreement, the insured
32 will have three business days to rescind the agreement.
33 Notwithstanding Chapter 2 (commencing with Section 1115) of
34 Division 9 of the Evidence Code, if the insured rescinds the
35 agreement, it may not be admitted in evidence or disclosed unless
36 the insured and all other parties to the agreement expressly agree
37 to its disclosure. If the agreement is not rescinded by the insured,
38 it is binding on the insured and the insurer, and acts as a release
39 of all specific claims for damages known at the time of the
40 mediation presented and agreed upon in the mediation

conference. If counsel for the insured is present at the mediation conference and a settlement is agreed upon that is signed by the insured's counsel, the agreement is immediately binding on the insured and may not be rescinded.

(d) This section does not affect rights under existing law for claims for damage that were undetected at the time of the settlement conference.

(e) All settlements reached as a result of department-referred mediation shall address only those issues raised for the purpose of resolution. Settlements and any accompanying releases are not effective to settle or resolve any claim or dispute not addressed by the mediator for the purpose of resolution, nor any claim that the insured may have related to the insurer's conduct in handling the claim. However, for mediations conducted pursuant to ~~subdivision (b) paragraph (1) of subdivision (a)~~ of Section 10089.70, the insurer and insured may agree to a complete settlement and release of all disputes related to the claim, including any claim the insured may have related to the insurer's conduct in handling the claim, provided the legal effect of the release is disclosed and fully explained to the claimant by the mediator.

Referral to mediation or the pendency of a mediation under this article is not a basis to prevent or stay the filing of civil litigation arising in whole or in part out of the same facts. Any applicable statute of limitations is tolled for the number of days beginning from the notification date to the insurer pursuant to Section 10089.72, until the date on which the mediation is either completed or declined, or the date on which the insured fails to appear for a scheduled mediation for the second time, or, in the event that a settlement is completed, the expiration of any applicable three business day cooling off period.

SEC. 11. Section 10089.84 of the Insurance Code is repealed.

~~10089.84. This chapter shall remain in effect until January 1, 2008, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2008, deletes or extends that date. The department shall not refer to mediation any case that arises from a claim under earthquake or automobile coverage when that claim is made to an insurer on or after January 1, 2006, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date, but any case~~

1 ~~arising from a claim for earthquake or automobile coverage~~
2 ~~received prior to January 1, 2006, may be mediated beyond that~~
3 ~~date. Any case arising from fire damage and covered under a~~
4 ~~policy of homeowners' insurance that is referred to mediation by~~
5 ~~the department prior to January 1, 2008, shall be mediated under~~
6 ~~this chapter whether or not the mediation has been completed~~
7 ~~prior to January 1, 2008. No later than October 1, 2004, the~~
8 ~~commissioner shall report to the Governor and to the Legislature~~
9 ~~on whether the program of mediating earthquake and auto~~
10 ~~damage claims should be extended, expanded, terminated, or~~
11 ~~otherwise modified, and shall include specific findings regarding~~
12 ~~the use of the program by insureds and insurers.~~